

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
T-NETIX, Inc.: Joint Application for	)	WC Docket No. 13-79
Streamlined Consent to	)	
Domestic and International Transfer of Control	)	
	)	
T-NETIX Telecommunications Services, Inc.:	)	
Application for Streamlined Consent to	)	
Domestic Transfer of Control	)	
	)	
Securus Technologies, Inc.: Joint Application	)	
for Streamlined Consent to Domestic and	)	
International Transfer of Control	)	

**PUBLIC KNOWLEDGE, UNITED CHURCH OF CHRIST, OFFICE OF  
COMMUNICATION INC., FREE PRESS, AND RAINBOW/PUSH COALITION  
REPLY TO THE OPPOSITION TO THE PETITION TO DENY APPLICATIONS**

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## **EXECUTIVE SUMMARY**

The Petitioners request the Commission return the above-captioned Applications to the normal schedule from streamlined processing and deny the Applications. The Applicants have failed to meet their burden to show that the transaction is in the public interest. The Applicants give only a single, threadbare rationale for the transaction's public interest: it will increase Securus's access to financial resources. However, they notably do not explain how the mere fact of access will further the public interest. In addition, the Applications contain insufficient information to properly evaluate the competitive impact of the transaction. In both local and national markets, the transaction raises competitive concerns, either through limiting competition by removing actual or potential competitors or through the continuation of local monopolies at each facility. Finally, the approving the transaction would sanction on-going rule-violations.

The Petitioners have standing to file this petition. United Church of Christ Minister Reverend Gonzales regularly works with prisoners and their families who are members of the United Church of Christ. Rev. Gonzales and these individuals will be harmed both by the continuation of the current high rates and by the potential for reduced competition.

The Commission should remove the Applications from streamlined processing to permit a full examination of the transaction's competitive effects. Returning the Applications to standard processing will not unduly delay the proceedings, as normal procedures still require final action within 180 days, but will allow the Commission to study the transaction-specific competitive and public interest concerns raised in the Petition and this Reply. The results of this thorough evaluation will warrant denial of the Applications.

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REPLY TO THE OPPOSITION TO THE PETITION TO DENY APPLICATIONS**

Public Knowledge, United Church of Christ, Office of Communication, Inc., Free Press, and Rainbow/PUSH Coalition (collectively, the “Petitioners”) submit their reply to the opposition to the petition to deny the above-captioned Applications for Streamlined Consent to Domestic Transfer of Control (the “Applications”) filed by T-NETIX, Inc. (“T-NETIX”), T-NETIX Telecommunications Services, Inc. (“T-NETIX Telecom”) and Securus Technologies, Inc. (“STI”) (collectively, the “Applicants”).<sup>1</sup> The Applicants have failed to meet their

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<sup>1</sup> Petitioners file pursuant to 47 C.F.R. § 63.52(c), which authorizes any interested party to file a Petition to Deny with regard to *any* 214 application. This Section also provides a specific right to reply to an opposition to a petition to deny. The deadline for such reply is five days after the deadline for the opposition, which is due ten days after the petition to deny. In this case the Opposition to the Petition to Deny was due April 21<sup>st</sup> (ten days after the April 11<sup>th</sup> submission of the Petition), and this Reply is due five days thereafter, or April 26<sup>th</sup>. Petitioners do not seek to merely delay these proceedings and so are filing prior to the April 26 deadline to demonstrate their commitment to expeditious consideration of the merits of these Applications.

affirmative burden to demonstrate how the proposed transfer of control advances the public interest and have provided insufficient information to evaluate the competitive impact of the transaction. As the Applications are inadequate, the Commission should remove the Applications from streamlined processing and give them more careful review.

## **I. PETITIONERS PLAINLY HAVE STANDING TO BRING THEIR PETITION TO DENY**

Members of the Petitioners are active consumers of Securus's prison phone services and will suffer direct harm if this transaction is consummated. To establish party-in-interest standing, "a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury."<sup>2</sup> Petitioners easily meet this minimal burden.<sup>3</sup>

Exhibit A of this pleading incorporates a sworn declaration from Reverend Sala Nolan Gonzales that explains how the unjust and unreasonable rates that Securus currently charges prisoners, their families, spouses, counselors, and clergyman, harm Rev. Gonzales, her ministry, and many members of the United Church of Christ.<sup>4</sup> As the Minister for Criminal Justice and Human Rights for the United Church of Christ, Rev. Gonzales details how she has worked with prisoners and their families who are members of the United Church of Christ.<sup>5</sup> Reverend Gonzales, these families, and these inmates are directly affected by the high telephone rates they

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<sup>2</sup> Applications of T-Mobile License LLC, AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC, WT Docket No. 12-21, *Order*, 27 FCC Rcd 4124 ¶ 6 (Apr. 18, 2012).

<sup>3</sup> Even if Petitioners' standing were a close issue (it is not), there is no question, and Applicants do not challenge, that Petitioners are authorized to file comments in response to the Commission's *Public Notice*. Thus, regardless of any formal issue of standing for a Petition to Deny, the Commission still must address Petitioners' arguments. *Cf.* Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, MB Docket No. 07-57 *Memorandum Opinion and Report & Order*, 23 FCC Rcd 12348 ¶ 64 n.199 (Aug. 5, 2008) (treating a petition to deny as an informal objection due to absence of standing and addressing arguments in objection) (citing 47 C.F.R. § 1.41).

<sup>4</sup> Decl. of Rev. Sala Nolan Gonzales, Exhibit A.

<sup>5</sup> *Id.* ¶ 5.

are forced to pay to communicate.<sup>6</sup> As she explains, “[t]hese rates place a significant financial and emotional toll” on United Church of Christ members, and “[t]hey damage family communication, which places children of prisoners at risk for criminal justice involvement, and they impair the potential of inmates to successfully reenter the community.”<sup>7</sup>

Whether as a result of the continuation of current terms and conditions offered by Securus or through the potential for diminished competition in communications services for correctional facilities throughout the country, Rev. Gonzales and other, similarly situated members of Petitioners’ organizations will suffer harm as a result of this transaction. Securus today serves approximately 2,200 correctional facilities that house more than 850,000 inmates across forty-four states. The competitive effects of this transaction will, therefore, affect millions of family, friends, clergy, caseworkers, and lawyers, who must communicate with inmates using services that Securus offers.

## **II. APPLICANTS HAVE NOT MET THEIR BURDEN TO SHOW THAT THE PETITION IS IN THE PUBLIC INTEREST AND THE COMPETITIVE IMPACT OF THE TRANSACTION IS UNCERTAIN**

As explained in the Petition, the Applications are virtually devoid of any showing that the contemplated transaction is required for public convenience and necessity.<sup>8</sup> Under 47 U.S.C. § 214(a), the Applications must demonstrate to the Commission that “present or future public convenience and necessity require or will require the [transaction].”<sup>9</sup> And it is the Applicants

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<sup>6</sup> *Id.* ¶ 6.

<sup>7</sup> *Id.*

<sup>8</sup> T-NETIX, INC.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control, Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, WC Docket No. 13-79, *Public Knowledge, United Church of Christ, Office of Communication, Inc., Free Press, and Rainbow/PUSH Coalition Petition to Deny Applications*, at 3-4 (April 11, 2013) [hereinafter Petition].

<sup>9</sup> 47 U.S.C. § 214(a).

that “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.”<sup>10</sup>

The Applicants fail to meet this affirmative burden of proof. In the original Applications, the Applicants provide a threadbare two sentences, stating only that “[t]he proposed transaction is non-controversial and will serve the public interest by providing [the Applicants] with access to the substantial financial assets of ABRY. Consummation of the proposed transaction will help [the Applicants] to continue to provide services to [their] customers and potentially expand or enhance those services at new facilities.”<sup>11</sup> The Petition detailed how such conclusory statements were inadequate to meet the required affirmative burden.<sup>12</sup>

The Applicants do nothing to improve these insufficient statements in their Opposition. In their lengthy rebuttal, the Applicants offer only the same, single affirmative ground in favor of the public interest, stating, in full, that “[t]he Commission has previously found that enhanced financial resources that would ensure the long-term viability of a competitive service provider is a public interest benefit. The Applicants will have access to substantial financial resources that will allow financing of continued service . . . and potentially to enhance or expand services.”<sup>13</sup>

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<sup>10</sup> *In re Echo Star Communications Corp.*, CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559 ¶ 25 (2002).

<sup>11</sup> T-NETIX, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4853-0680-9875, *Public Interest Reasons for Grant*, available at <http://apps.fcc.gov/ecfs/document/view?id=7022132653> (last visited Apr. 24, 2013); T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control, File No. 4829-5131-3939, *Public Interest Statement*, available at <http://apps.fcc.gov/ecfs/document/view?id=7022132653> (last visited Apr. 24, 2013); Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4841-7637-0451, *Description of Geographic Service Area and Services in Each Area & Presumption of Non-Dominance and Qualification for Streamlined Proceedings*, available at <http://apps.fcc.gov/ecfs/document/view?id=7022132653> (last visited Apr. 24, 2013).

<sup>12</sup> *See* Petition, at 3-4.

<sup>13</sup> T-NETIX, INC.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control, Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, WC Docket No. 13-79, *Opposition to the Petition to Deny by*

Notably, the referenced FCC precedent is not applicable to the current situation. While access to financing to save a competitive provider may be in the public interest, the Applicants have made no assertion, let alone shown, that increased access to financing is needed to rescue Securus from exiting the market. The transaction may increase financing but the Applicants have been so far unable to demonstrate how this bare fact serves the public interest. Nebulous statements of potential expansions cannot meet the Applicant's affirmative responsibility to prove "by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest."<sup>14</sup>

Nor do the Applicants show affirmative public interest benefits by their repeated protestations that no competitive harm will result from the transaction. As an initial matter, the lack of competitive harm is not sufficient to meet the Applicants' affirmative burden to demonstrate a positive public interest benefit. More broadly, however, the Applicants fail to provide sufficient information to demonstrate that the transaction will not result in any competitive harm. As a threshold matter, the Applications fail to define the relevant product and geographic market for inmate phone services and, as such, do not adequately evaluate the competitive effects of the proposed transaction on that market.<sup>15</sup>

The few details provided by the Applications are sufficient only to raise serious concerns of potential competitive harm. While Securus asserts exclusive contracts are subject to competitive bidding and that the transaction will leave the competitive landscape unaltered,<sup>16</sup> this transaction does threaten to reduce competition in an already concentrated market. ABRY Partners, which describes itself as a "private equity investment firm focused solely on media,

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*Public Knowledge, United Church of Christ, Office of Communication, Inc., Free Press, and Rainbow/PUSH Coalition*, at 4-5 (April 11, 2013) [hereinafter *Opposition*].

<sup>14</sup> *In re Echo Star Communications Corp.*, ¶ 25.

<sup>15</sup> *See* Petition, at 5-6.

<sup>16</sup> *See* Opposition, at 6, 7.



communications, and business and information services investments,”<sup>17</sup> or its subsidiaries and affiliates, are actual or potential competitors to Securus in bidding for these contracts. As a result, the proposed transfer of control risks the elimination of an independent competitor for inmate calling services and the reduction of competition in that market both nationally and locally. Moreover, in its Opposition, Securus does not contest that it controls terminating and originating monopolies at the correctional facilities that it currently serves. The uncertain implications of transferring such monopolistic local market position require more careful consideration.

Further, it is against the public interest for the Commission to allow transfers of control in situations of serious, ongoing rule violations, as such an approval suggests that violations of the Commission’s rules go unpunished and promotes such behavior throughout the market.<sup>18</sup> As detailed in the Petition, the Applicants charge manifestly unjust and unreasonable rates to their captured consumers in blatant violation of the Commission’s rules.<sup>19</sup> The ongoing Rulemaking designed to find an appropriate rate for the prison phone industry generally may help to cure usurious rates going forward;<sup>20</sup> it does not, however, cure Securus's specific violations of Sections 201 and 202 of the Communications Act, and it does not ameliorate the intent of ABRY to continue the same violations.

### **III. THE APPLICATIONS ARE INAPPROPRIATE FOR STREAMLINED PROCESSING**

The Commission should remove the Applications from expedited, streamlined processing and permit them to be considered in the normal review process. Using the normal procedures

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<sup>17</sup> ABRY Partners, Inc., available at <http://www.abry.com/Home.aspx>.

<sup>18</sup> *XM Satellite Radio Holdings Inc.*, ¶ 5 (resolving complaints of rule violation prior to granting transfer application).

<sup>19</sup> See Petition, at 7-8.

<sup>20</sup> Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, *Notice of Proposed Rulemaking*, 27 FCC Red 16629 (2012).

will not unduly delay the proceeding (as a decision is due within 180 days) and will allow the Commission to develop the detailed and concrete information needed to evaluate the Applications' public interest and competitive impact.

The applicable federal regulations provide that an application may be removed from streamlined processing if “(iv) Timely-filed comments on the application raise public interest concerns that require further Commission review; or (v) The Commission . . . otherwise determines that the application requires further analysis to determine whether a proposed transfer of control would serve the public interest.”<sup>21</sup> When an application is removed from streamlined processing, final action on the application “should be expected no later than 180 days” except in extraordinary circumstances.<sup>22</sup>

This Reply and the Petition are timely-filed comments that raise sufficient public interest concerns that the Applications should be removed from streamlined processing. The Applications are virtually empty of any affirmative public interest showing and utterly fail to meet the Applicants' burden to demonstrate that the transaction is in the public interest. Moreover, the Applications raise serious concerns of potential competitive harm resulting from the transaction but provide insufficient information to fully assess the transaction's true impact on competition.

Likewise, an application should be removed from streamlined processing if “on its face,” it “violate[s] a Commission rule or the Communications Act.”<sup>23</sup> On the face of the Applications, ABRY proposes to continue the unjust and unreasonable rates charged to Securus's captured consumers. Such rates violate 47 U.S.C. §§ 201 & 202 and ABRY's proposal to continue them thus constitutes grounds to remove the Applications from streamlined processing.

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<sup>21</sup> 47 C.F.R. § 63.03(c)(1).

<sup>22</sup> *Id.* § 63.03(c)(2).

<sup>23</sup> *Id.* § 63.03(c)(1)(ii).

Despite the Applicants' attempts to caricature the Petition's arguments, the Petition and this Reply raise narrowly tailored, transaction-specific concerns that are not rebutted by the Opposition. Most distinctly, the Opposition attempts to depict the Petition as nothing more than an indirect attack on prison phone rates that is more appropriate for the Rulemaking in WC Docket 12-375. Such an allegation is simply not true. The Petition and this Reply primarily focus on the potential competitive harm resulting from the transactions. Indeed, the rates charged are referenced only in regard to ongoing rule violations sufficient to remove the proceeding from streamlined processing.<sup>24</sup>

Nor do the Petitioners request any extreme remedy, as insinuated by the Applicants.<sup>25</sup> Removing the proceeding from streamlined processing is hardly an extraordinary request as it still requires final action within 180 days. Such removals have been granted in dozens of cases, often with less developed public interest concerns than raised here.<sup>26</sup> For example, the Application Filed for the Transfer of Control of dPi Teleconnect, LLC to Amvensys Capital Group, LLC was removed from streamlined processing after comments were filed by an individual, Mr. Lawrence Green, alleging, among other things, that the Chief Executive Officer of Amvensys had made a number of false and misleading statements.<sup>27</sup> These claims were unsubstantiated and rebutted directly by the applicants. Nevertheless, the petition was removed

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<sup>24</sup> *Id.*

<sup>25</sup> *See* Opposition, at 5.

<sup>26</sup> *See, e.g.*, Application Filed for the Transfer of Control of dPi Teleconnect, LLC to Amvensys Capital Group, LLC, f/k/a Amvensys Telecom Holdings, LLC, WC Docket No. 12-32, *Public Notice* (Feb. 9, 2012); Domestic Section 214 Application Filed for the Transfer of Control of Stanacard, LLC, WC Docket No. 12-18, *Public Notice* (Jan. 26, 2012); Domestic Section 214 Application Filed for the Transfer of Control of Bright Long Distance, Ltd. to Com Net, Inc., WC Docket No. 11-51, *Public Notice* (Mar. 22, 2011); Domestic Section 214 Application Filed for the Transfer of Control of The Nova Telephone Company to VNC Enterprises, WC Docket No. 10-136, *Public Notice* (Jul. 13, 2010).

<sup>27</sup> Application Filed for the Transfer of Control of dPi Teleconnect, LLC to Amvensys Capital Group, LLC, f/k/a Amvensys Telecom Holdings, LLC, WC Docket No. 12-32, *Lawrence Green Comments Re: Zahed Lateef* (Feb. 21, 2012); Application Filed for the Transfer of Control of dPi Teleconnect, LLC to Amvensys Capital Group, LLC, f/k/a Amvensys Telecom Holdings, LLC, WC Docket No. 12-32, *dPi Teleconnect Reply to Comments* (Mar. 1, 2012).

from streamlined processing. Similarly, the Application Filed for the Acquisition of Assets of Comtel Telecom Assets L.P. and Comtel Virginia LLC by Matrix Telecom, Inc. and Matrix Telecom of Virginia, Inc. was removed from streamlined processing after comments were filed by Hypercube Telecom asserting that Comtel had not paid certain debts to Hypercube.<sup>28</sup> Hypercube did not even request that the transaction be prohibited, but only that conditions be imposed.<sup>29</sup> Despite the narrow concern raised and the limited remedy sought, the Commission removed the proceeding from streamlined processing. In neither of these cases did the comments raise the wide-ranging, serious public interest concerns raised by the instant proceeding.

In this case, the Commission should return the Applications to the normal procedures to permit a full examination of the transaction's competitive impact. That examination cannot occur in the compressed framework of a streamlined proceeding. As a threshold matter, the Commission must define the relevant product and geographic market for inmate phone services and assess the competitive effects of the proposed transaction on that market. For the product market, contracts for inmate communications services are often individually negotiated pursuant to a Request for Proposals (RFP). The contracts call for specialized service and security features offerings and almost always incorporate considerable flow-through payments from prisoners, their families and clergy to the operators of the correctional facility. Under these circumstances, it seems highly implausible that a significant number of correctional institutions would switch to purchasing inmate communications services through ordinary enterprise offerings or retail channels in the event of a small but significant price increase in services. Therefore, inmate

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<sup>28</sup> Application Filed for the Acquisition of Assets of Comtel Telecom Assets L.P. and Comtel Virginia LLC by Matrix Telecom, Inc. and Matrix Telecom of Virginia, Inc., WC Docket No. 10-82, *Comments of Hypercube Telecom, Inc.* (Apr. 14, 2010).

<sup>29</sup> *Id.* at 6.

communications service likely constitutes its own relevant product market distinct from enterprise service offerings. With respect to the geographic market, inmate communications services are sold in local markets that are affected by nationwide competition. The national and local nature of competition likely warrants consideration of both nationwide and local competitive effects.

Once the relevant product and geographic markets are defined, the Commission must analyze the full scope of potential competitive effects of the proposed transaction on inmate communications services, including pricing, terms, and conditions, as well as the potential for continuation of the current unjust and unreasonable rate structure Securus offers. The Applicants have failed to address these concerns and the current record is insufficient to definitively evaluate them. The Commission should return the Applications to normal procedures to undertake this necessary competitive analysis.

#### **IV. IN REMOVING THE APPLICATIONS FROM STREAMLINED PROCESSING, APPLYING PERMIT-BUT-DISCLOSE RULES WOULD BENEFIT THE PUBLIC INTEREST**

Based on the serious public interest concerns raised in the original Petition and in this Reply, the Commission should accord this proceeding “permit-but-disclose” status under the FCC’s *ex parte* rules.<sup>30</sup> Designation as a permit-but-disclose proceeding would serve the public interest by permitting a full exchange of views regarding the issues under consideration by the Commission. Moreover, classifying the proceeding as permit-but-disclose would facilitate the development of a complete record upon which a well-reasoned decision can be made. Accordingly, Petitioners ask that the Commission find that permit-but-disclose *ex parte* procedures will govern the consideration of these Applications going forward.

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<sup>30</sup> See 47 C.F.R. § 1.1200 *et seq.*

**V. PETITIONERS' PUBLIC STATEMENTS OPPOSING UNJUST PRISON RATES ARE IRRELEVANT TO THE MERITS OF THEIR PETITION TO DENY**

Applicants suggest that because Petitioners oppose unjust and unreasonable rates for prison telephone service generally, they should not be allowed to oppose these specific Applications, and contend that Petitioners' arguments regarding these Applications should be discounted.<sup>31</sup> Not so. Petitioners' statements of interest, cited by Securus in its *ex parte* presentation to Commission staff,<sup>32</sup> are different than the Petitioners' transaction-specific arguments in their Petition to Deny and this Reply, which identify unanswered questions about market power and market structure that raise public interest concerns. That some of the Petitioners believe broader structural reform of prison phone rates and terms is required has no bearing on the transaction-specific competitive and consumer harms that may occur as a direct result of this transaction. Nor does it allow the Commission to turn a blind eye to the fact that the Applicants have failed to meet their affirmative burden to show that the transaction is in the public interest.

The Petitioners did not argue for a blanket rejection of all transfers of control. Petitioners merely indicated that based on the exceptionally limited information and weak public interest justifications that the Applicants have provided to date, the Commission lacks sufficient information to grant the Applications or afford the Applications streamlined processing. Statements regarding Applicant's business model generally do not obviate the need to conduct a thorough public interest analysis of this transaction.

**VI. CONCLUSION**

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<sup>31</sup> See Securus Technologies, Inc., WC Docket No. 13-79, *Notice of Ex Parte*, at 3-4 (Apr. 17, 2013).

<sup>32</sup> *Id.*

For the foregoing reasons, we ask that the Commission remove these Applications from streamlined processing and deny these Applications.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Harold Feld, hereby certify that on this 25<sup>th</sup> day of April, 2013, I have caused a copy of the foregoing Petition to Deny of Public Knowledge, United Church of Christ, Office of Communications, Inc., Free Press, and Rainbow/PUSH Coalition to be served as specified upon the parties below:

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